IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1413 of 2007

BALMUKAND
V/S
CHANDER PRAKASH & ANR.

Mr. SR SHARMA, for the appellant / petitioner

Date of Order : 16.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

It is sought to be contended that the the learned lower Appellate Court should not have decided application under Order 41 Rule 27 independently, rather it should have been decided alongwith the appeal itself.

A look at the documents filed with the writ petition shows that it appears that application under Order 41 Rule 27 was filed way-back on 20.11.2006, to which a reply was filed on 22.11.2006, and the impugned order has been passed on 21.12.2006.

Learned counsel, in these circumstances, on 4.4.2007, was directed to produce the certified copies of the order-sheets from the date of filing of the application under Order 41 Rule 27 till passing of the impugned order. This was directed with a view to be satisfied, as to whether the parties were ad idem that the application under Order 41 Rule 27 should be independently decided, or not,

and though the order-sheets have not been produced, but learned counsel submits that as a matter of fact, the case went on being adjourned for arguments on the application under Order 41 Rule 27 only. In these circumstances, I am not inclined to accept the contention.

So far the merits of the impugned order are concerned, in my view, it would not be appropriate for me to go into the merits of the impugned order at this stage, and it should be left open to the petitioner to assail the correctness, legality, or propriety of the impugned order by raising appropriate ground in further appeal if necessity so arises, and if the petitioner so stands advised.

Accordingly, the writ petition is dismissed. However, the petitioner shall be at liberty to assail the correctness, legality, or propriety of the impugned order by raising appropriate ground in further appeal, if necessity so arises, and if the petitioner so stands advised.

(N P GUPTA),J.

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